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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

AWAAZ BAKSH, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

NIVS INTELLIMEDIA  
TECHNOLOGY GROUP, INC.,  
TIANFU LI, ALEXANDER CHEN, and  
SIMON ZHANG,

Defendants.

No. 2:11-cv-02647-R-JCG

**LEAD PLAINTIFF MOVANT W.  
THOMAS MAYNARD'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
HIS MOTION FOR  
CONSOLIDATION, APPOINTMENT  
AS LEAD PLAINTIFF, AND  
APPROVAL OF LEAD COUNSEL**

Date: July 5, 2011

Time: 10:00 a.m.

Courtroom: 8

Judge: Hon. Manuel L. Real

LEAD PLAINTIFF MOVANT W. THOMAS MAYNARD'S MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF HIS MOTION FOR CONSOLIDATION, APPOINTMENT AS LEAD  
PLAINTIFF, AND APPROVAL OF LEAD COUNSEL

NOS. 2:11-cv-02647-R-JCG, 2:11-cv-02716-R-JCG, 2:11-cv-03004-R-JCG, 2:11-cv-03857-R-JCG

1 GAIL KWOK, individually and on  
2 behalf of all others similarly situated,

3 Plaintiff,

4 vs.

5 NIVS INTELLIMEDIA  
6 TECHNOLOGY GROUP, INC.,  
7 TIANFU LI, SIMON ZHANG, and  
ALEXANDER CHEN,

8 Defendants.

No. 2:11-cv-02716-R-JCG

9 IRA F/B/O EDWARD FRITSCHÉ,  
10 individually and on behalf of all others  
similarly situated,

11 Plaintiff,

12 vs.

13 NIVS INTELLIMEDIA  
14 TECHNOLOGY GROUP, INC.,  
15 TIANFU LI, ALEXANDER CHEN,  
16 SIMON ZHANG, RUXIANG NIU,  
MINGHUI ZHANG, GENGQIANG  
YANG, CHARLES MO, RODMAN &  
RENSHAW, LLC, and WESTPARK  
CAPITAL, INC,

17 Defendants.

No. 2:11-cv-03004-R-JCG

19 ALI ARAR, individually and on behalf  
20 of all others similarly situated,

21 Plaintiff,

22 vs.

23 NIVS INTELLIMEDIA  
24 TECHNOLOGY GROUP, INC.,  
TIANFU LI, ALEXANDER CHEN, and  
SIMON ZHANG.

25 Defendants.

No. 2:11-cv-03857-R-JCG

26  
27  
28 LEAD PLAINTIFF MOVANT W. THOMAS MAYNARD'S MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF HIS MOTION FOR CONSOLIDATION, APPOINTMENT AS LEAD  
PLAINTIFF, AND APPROVAL OF LEAD COUNSEL

NOS. 2:11-cv-02647-R-JCG, 2:11-cv-02716-R-JCG, 2:11-cv-03004-R-JCG, 2:11-cv-03857-R-JCG

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## 1 I. INTRODUCTION

2 The Court should grant Lead Plaintiff Movant W. Thomas Maynard's motion  
 3 based on simple application of Federal Rule of Civil Procedure 42 and 15 U.S.C.  
 4 § 78u-4. Under Rule 42, the Court should consolidate the above-captioned putative  
 5 class actions (collectively, the "Related Actions") against Defendant NIVS  
 6 IntelliMedia Technology Group, Inc. ("NIVS") and its directors and officers,  
 7 Defendants Tianfu Li, Alexandar Chen, and Simon Zhang (collectively,  
 8 "Defendants") for three reasons. First, all actions arise from the same events: NIVS's  
 9 dissemination of false and misleading statements regarding its financial condition  
 10 between March 24, 2010 and March 25, 2011 (the "Class Period"). Second, all  
 11 complaints allege identical claims under the Sections 10(b) and 20(a) of the Securities  
 12 Exchange Act of 1934 (the "Exchange Act"). Third, all complaints seek damages on  
 13 behalf of NIVS shareholders caused by the artificially inflated prices of NIVS stock as  
 14 a result of Defendants' misconduct.

15 Upon consolidation, the Court should apply the three-step process under  
 16 Section 21D of the Exchange Act, as amended by the Private Securities Litigation  
 17 Reform Act of 1995 ("PSLRA"), and appoint Mr. Maynard as lead plaintiff because:

- 18 • Mr. Maynard has timely made a motion for appointment as lead plaintiff;
- 19 • Mr. Maynard is the presumptive lead plaintiff since he has lost at least  
 20 \$51,719.20 as a result of Defendants' misrepresentations and, to the best  
 21 of his knowledge, he has the largest financial interest in the relief sought  
 22 by the Class; and
- Mr. Maynard meets the typicality and adequacy of representation  
 requirements under Federal Rule of Civil Procedure 23.

23 *See* 15 U.S.C. § 78u-4. Mr. Maynard's selection of the law firm of Chapin Fitzgerald  
 24 Sullivan & Bottini LLP as lead counsel should be approved because the firm  
 25 specializes in shareholder class action litigation, has a demonstrated record of success  
 26 in litigating securities class actions, and is thus well-qualified to represent the Class.

## II. FACTUAL BACKGROUND

### A. These Actions Involve Identical Questions of Fact and Law

The complaints in the Related Actions contain nearly identical allegations. NIVS is a Delaware corporation with its principal executive officers in Guangdong Province, China. During the Class Period, NIVS's filings with the Securities and Exchange Commission ("SEC") contained numerous false and misleading statements about NIVS's financial condition. Specifically, Defendants failed to disclose that NIVS:

- had inaccurately recorded certain transactions;
- had discrepancies in its accounts receivables and other accounting records; and
- NIVS lacked adequate internal controls to prevent accounting irregularities.

As a result of these misrepresentations, NIVS stock traded at artificially inflated prices during the Class Period. On March 24, 2011, the trading of NIVS stock was halted. On March 25, 2011, NIVS announced that its board approved the dismissal of its auditor, MaloneBailey LLP. MaloneBailey stated that it was "unable to rely on [NIVS] management's representations as they relate to previously issued financial statements and . . . could no longer support its audit opinion dated March 24, 2010, related to [its] audit of consolidated financial statements of [NIVS] . . . as of December 31, 2009, included in [NIVS's] annual report on Form 10-K."

As a result of these announcements, shareholders who purchased NIVS stock during the Class Period suffered damages. The Related Actions followed, alleging two causes of action under the Exchange Act: securities fraud in violation of Section 10(b) and control person liability under Section 20(a).

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**B. Mr. Maynard Has Timely Moved For Lead Plaintiff Appointment**

On March 29, 2011, a notice was published on Business Wire regarding the commencement of *Baksh*. Declaration of Francis A. Bottini, Jr. (“Bottini Decl.”) Ex. A. In compliance with 15 U.S.C. § 78u-4(a)(3)(A)(1), Mr. Maynard moves for lead plaintiff appointment on May 31, 2011 – 60 days after the publication of that notice. *See* Bottini Decl. Ex. A at 1.

**III. ARGUMENT**

**A. The Related Actions Should Be Consolidated**

Consolidation is proper under Rule 42(a) when actions involve common questions of law or fact. FED. R. CIV. P. 42(a); *see Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1150 (N.D. Cal. 1999). Courts have broad discretion under Rule 42 to consolidate cases. *Investors Research Co. v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). Exercising this discretion, courts have recognized that securities fraud class actions are ideally suited for consolidation under Rule 42(a) because these actions involve common parties and issues and because consolidation expedites pretrial and discovery proceedings, reduces duplication, and minimizes the costs and time expended by all persons involved. *See In re Equity Funding Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 176 (C.D. Cal. 1976).

Here, the Related Actions arise from the same underlying events – NIVS’s dissemination of false and misleading information regarding its financial condition during the Class Period. All complaints allege the same causes of action against nearly identical defendants, including NIVS, Chen, Li, and Zhang. As in *Aronson* and *Equity Funding*, consolidation is appropriate where, as here, resolution of these claims involves identical issues of law and fact. *See* FED. R. CIV. P. 42(a); *see also Cunha v. Hansen Natural Corp.*, Nos. ED CV 08-1249-SGL (JCx) *et al.*, 2009 U.S. Dist. LEXIS 61086, at \*1 (C.D. Cal. July 13, 2009).



**B. The Court Should Appoint Mr. Maynard as Lead Plaintiff**

**1. The PSLRA Provides a Three-Step Process for Lead Plaintiff Appointment**

The PSLRA provides a rebuttable presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that:

- (1) has either filed the complaint or made a motion in response to a notice;
- (2) in the determination of the court, has the largest financial interest in the relief sought by the class; and
- (3) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

**2. Mr. Maynard's Motion Is Timely**

According to the March 29, 2010 notice, the 60-day period in which Class members may move to be appointed lead plaintiff under 15 U.S.C. § 78u-4(a)(3)(A)(II) expires on May 31, 2010. *See Bottini Decl. Ex. A* at 1. Thus, Mr. Maynard's motion is timely. In addition, Mr. Maynard has retained competent counsel to represent him and the Class. *See Bottini Decl. Ex. D*. Mr. Maynard thus satisfies the individual requirements of 15 U.S.C. § 78u-4(a)(3)(B) and is entitled to have his application for appointment as lead plaintiff and approval of lead counsel considered by the Court.

**3. Mr. Maynard Is the Presumptive Lead Plaintiff**

The PSLRA requires the Court to appoint a "lead plaintiff" in securities class actions. 15 U.S.C. § 78u-4(a)(3)(B)(i). The "lead plaintiff" is "the member or members of the purported plaintiff class that the [C]ourt determines to be most capable of adequately representing the interests of class members." *Id.* To identify the presumptive "most adequate plaintiff," the Court must first determine which



1 member or group of members of the class has the largest alleged loss. 15 U.S.C. §  
 2 78u-4(a)(3)(B)(iii)(I)(bb); *see In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002).

3 As demonstrated in Mr. Maynard's certification, he purchased 21,000 shares of  
 4 NIVS common stock during the Class Period. *See Bottini Decl. Ex. B at 2.* As a  
 5 result of these purchases, Mr. Maynard suffered approximately \$51,719.20 in  
 6 damages. Bottini Decl. Ex. C. To the best of his knowledge, Mr. Maynard does not  
 7 know of another NIVS shareholder who is seeking lead plaintiff appointment and who  
 8 has suffered a higher amount of damages. Thus, Mr. Maynard is qualified to become  
 9 the presumptive most adequate plaintiff. *See Cavanaugh*, 306 F.3d at 730.

#### 10 **4. Mr. Maynard Satisfies the Requirements of Rule 23**

11 The PSLRA requires that lead plaintiffs, in addition to having the largest  
 12 financial interest, must "satisf[y] the requirements of Rule 23 of the Federal Rules of  
 13 Civil Procedure." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(1)(cc). Rule 23(a) requires that:  
 14 (1) the class be so numerous that joinder of all members is impracticable; (2) there be  
 15 questions of law or fact common to the class; (3) such claims be typical of those of the  
 16 class; and (4) the representatives fairly and adequately protect the interests of the  
 17 class. FED. R. CIV. P. 23(a). In deciding a lead plaintiff motion, courts limit their  
 18 inquiry to the typicality and adequacy prongs of Rule 23(a). *Tanne v. Autobytel, Inc.*,  
 19 226 F.R.D. 659, 666 (C.D. Cal. 2005) (citing *In re Cendant Corp. Litig.*, 264 F.3d  
 20 201, 263 (3d Cir. 2001)); *Armour v. Network Assocs., Inc.*, 171 F. Supp. 2d 1044,  
 21 1051 (N.D. Cal. 2001).

22 "The typicality requirement of Rule 23(a)(3) is satisfied when the named  
 23 plaintiffs have (1) suffered the same injuries as the absent class members, (2) as a  
 24 result of the same course of conduct, and (3) their claims are based on the same legal  
 25 issues." *Armour*, 171 F. Supp. 2d at 1052. This does not require that the  
 26 representative claims be substantially identical to absent class members' claims; it

1 only requires that the claims are “reasonably co-extensive with those of absent class  
2 members.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Thus,  
3 courts have repeatedly held that typicality is satisfied in securities class actions when  
4 the class representative, like all other class members, suffered damages as a result of  
5 purchasing the subject stock during the relevant time period at prices that were  
6 artificially inflated by defendants’ alleged false and misleading statements. *See, e.g.*,  
7 *Glauser v. EVC Career Colls. Holding Corp.*, 236 F.R.D. 184, 189 (S.D.N.Y. 2006).

8 Mr. Maynard’s claims are typical of those of other Class members. He  
9 purchased NIVS stock during the Class Period at prices artificially inflated by  
10 Defendants’ misrepresentations and omissions. Like other Class members, Mr.  
11 Maynard suffered significant damages as a result of his purchases of NIVS stock.  
12 These shared claims satisfy Rule 23(a)(3)’s typicality requirement because they are  
13 based on the same legal theory and arise from the same events and course of conduct  
14 as the Class claims.

15 The adequacy of representation requirement of Rule 23(a)(4) is satisfied when  
16 counsel for the class is competent, the representative’s interests are not antagonistic to  
17 those of the absent class members, and it is unlikely that the action is collusive.  
18 *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129 (C.D. Cal. 1999) (citing *In re*  
19 *N. Dist. of Cal. Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir.  
20 1982)). Here, Mr. Maynard is an adequate representative of the Class for two reasons.  
21 First, Mr. Maynard’s interests are clearly aligned with the interests of the members of  
22 the Class because, like other Class members, he paid artificially inflated prices for  
23 NIVS stock due to Defendants’ materially false and misleading statements. There is  
24 no antagonism between Mr. Maynard’s interests and those of the putative class.  
25 Second, Mr. Maynard has taken significant steps that demonstrate his willingness and  
26 ability to protect the interests of the Class: (1) he has executed a sworn certification  
27

1 detailing his Class Period transactions; (2) he has timely moved this Court for  
2 appointment as lead plaintiff; and (3) he has retained competent and experienced  
3 counsel to prosecute these claims. As discussed below, Mr. Maynard's proposed  
4 counsel is highly qualified, experienced, and able to conduct this complex litigation in  
5 a professional manner. *See Bottini Decl. Ex. D.* Thus, Mr. Maynard satisfies the  
6 typicality and adequacy requirements of Rule 23 for the purposes of this motion.

7 **C. The Court Should Approve Mr. Maynard's Choice of Counsel**

8 The PSLRA provides that the lead plaintiff shall, subject to court approval,  
9 select and retain lead counsel. 15 U.S.C. § 78u-4(a)(3)(B)(v). A court should not  
10 disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests  
11 of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). Mr. Maynard has selected the  
12 law firm of Chapin Fitzgerald Sullivan & Bottini LLP as Lead Counsel. The attorneys  
13 at Chapin Fitzgerald have substantial experience in prosecuting securities class  
14 actions. *See Bottini Decl. Ex. D.* Indeed, Mr. Bottini, one of the firm's partners, has  
15 litigated many securities class actions in this District, including a securities class  
16 action that settled for \$10.5 million on the eve of trial (the Friday before jury selection  
17 was set to commence). *See Karlin v. Alcatel*, No. SA CV 00-0214 DOC EE, 2001  
18 WL 1301216, at \*1 (C.D. Cal. Aug. 13, 2001) (denying defendants' motion for  
19 summary judgment).<sup>1</sup> Therefore, the Court should approve Mr. Maynard's selection  
20 of counsel.

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26 <sup>1</sup> At the time, Mr. Bottini was a partner at Wolf Haldenstein Adler Freeman &  
Herz LLP, co-lead counsel for plaintiffs.

**IV. CONCLUSION**

For reasons set forth above, Mr. Maynard respectfully requests that the Court (1) consolidate the related actions; (2) appoint him as Lead Plaintiff and (3) approve his selection of Chapin Fitzgerald Sullivan & Bottini, LLP as Lead Counsel for the Class.

DATED: May 31, 2011

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